

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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COSMO CAMPODONICO,

Plaintiff,

18 Civ. 8606 (AEK)

-against-

**ORDER**

WAL-MART STORES EAST, LP, et al.,

Defendants.

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**THE HONORABLE ANDREW E. KRAUSE, U.S.M.J.**

At the last status conference in this matter on December 21, 2020, counsel for the parties reported that they had yet to have any contact with non-party witnesses Samuel Phillippe and Dede Burgado, despite those witnesses having been properly served with subpoenas for deposition testimony and despite this Court having issued orders on March 24, 2020 and November 19, 2020 regarding the non-compliance with the subpoenas.

It is important for Mr. Phillippe and Ms. Burgado to understand that “serious consequences . . . may result from their continued failure to abide by this Court’s orders and lawfully issued subpoenas. In particular, available sanctions can be of a coercive nature to secure future compliance with court orders, or to compensate the party that has been damaged by the non-compliance, or both . . . . [T]hese have traditionally included costs associated with service and attorneys fees for time expended in the failed deposition attempt.” *Baez v. City of Schenectady*, Civ. No. 1:16-CV-853 (FJS/DJS), 2017 U.S. Dist. LEXIS 181190, \*7 (N.D.N.Y. Oct. 31, 2017).

As noted in the Court’s November 19, 2020 order, counsel have made clear to the Court that complying with the respective subpoenas will not require a substantial time commitment,

and compliance can be achieved by telephone or video-recording mechanism—neither witness would have to appear in person for a deposition, to the extent concerns about an in person meeting have contributed to the witnesses’ failure to respond to the subpoenas to this point.

A telephone conference with Magistrate Judge Krause is scheduled in this matter on **Thursday, February 18, 2021 at 2:00 p.m.** Mr. Phillippe and Ms. Burgado are **directed to dial in** to this telephone conference to discuss the subpoenas. It is possible that participating in this conference may be sufficient to address the matters for which the parties in this case have been seeking their depositions.

To access the teleconference, follow these directions: (1) dial the meeting number: (877) 336-1831; (2) enter the access code: 2751700; and (3) press pound (#) to enter the teleconference as a guest. Should anyone experience any technical issues with the teleconferencing system, please contact Magistrate Judge Krause’s chambers at (914) 390-4070. Alternatively, Mr. Phillippe and Ms. Burgado could simply communicate with counsel for the parties to this case to understand what is required of them, and work collaboratively with counsel to make arrangements to comply with the subpoena safely.

Counsel for defendants is directed to serve a copy of this order on Mr. Phillippe and Ms. Burgado as promptly as possible so that the witnesses have notice of, and opportunity to participate in, the February 18, 2021 conference. Service by mail at the witnesses’ last known address is an acceptable means of service for these purposes. As part of serving this order, counsel must also provide telephone numbers and email addresses where Mr. Phillippe and Ms. Burgado can contact either the attorney for the plaintiff or the attorney for the defendant in this matter.

Counsel for defendants is directed to file proof of such service on the docket no later than February 17, 2021.

Dated: February 10, 2021  
White Plains, New York

**SO ORDERED.**



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ANDREW E. KRAUSE  
United States Magistrate Judge